

REMARKS

Status of the Claims

With the entry of this amendment, claims 40-43 and 47-51 are pending.

Claims 42 and 47 are amended herein. These amendments are fully supported by the specification as originally filed. The amendments do not introduce new matter. These amendments are made without prejudice and are not to be construed as abandonment of previously claimed subject matter or acquiescence to any objection or rejection of record.

Interview Summary

Applicants thank Examiner Gebreyesus for helpful discussions on July 12, 2010. Participants in telephonic interview were Stacy Landry and Examiner Kagnew Gebreyesus. Examiner Gebreyesus proposed amendments to claims 42, and 47 and Applicant agreed to make them after an action was sent.

The claims are not anticipated under 35 U.S.C. § 102

The claims were rejected as allegedly anticipated by Lawlor, Kiga, and Barker under 35 U.S.C. § 102. The cited references allegedly contain sequences that could hybridize to polynucleotides of the invention under highly stringent conditions. To expedite prosecution, but without acquiescing to the rejection, Applicants herein amend claim 47 to delete the portion of the claim referring to polynucleotides that hybridize under highly stringent conditions to other polynucleotides of the invention. Applicants therefore respectfully request that the rejection be withdrawn.

Non-Statutory Obvious-Type Double Patenting

Claims 40-43 and 47-51 were provisionally rejected for alleged non-statutory obvious-type double patenting over copending application 10/826.919. The Examiner requested that a terminal disclaimer be filed under 37 C.F.R. § 1.321(c) or (d). Applicants herewith submit the requested terminal disclaimer.


Conclusion

In view of the foregoing, Applicants believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the claims are deemed not to be in condition for allowance after consideration of this Response, a telephone interview with the Examiner is hereby requested. Please telephone the undersigned at (510) 337-7871 to schedule an interview.

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Respectfully submitted,


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Attachments:

- 1) A petition to extend the period of response for 3 months;
- 2) A transmittal sheet;
- 3) A fee transmittal sheet;
- 4) A receipt indication postcard
- 5) Terminal Disclaimer